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Report of the Joint Inspection Unit on Administration of Justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Joint Inspection Unit entitled "Administration of the Statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal" (JIU/REP/2004/3).

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ADMINISTRATION OF JUSTICE :

Harmonization of the Statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal

Prepared by

Wolfgang Münch

Victor Vislykh

M. Deborah Wynes

Joint Inspection Unit

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In accordance with Article 11.2 of the JIU Statute, this report has been "finalized after consultations among the Inspectors so as to test the recommendations being made against the collective wisdom of the Unit".

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EXECUTIVE SUMMARY

Objective: To provide a definitive opinion on the feasibility of harmonizing the statutes of the United Nations Administrative Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT) with the view to closing the gap between the two and removing the perception of inequality and discrimination in administration of justice within the United Nations family, thus strengthening the United Nations common system.

A. The General Assembly in resolution 57/307 noted that "the staff of the United Nations secretariat and the specialized agencies are subject to two different systems of administration of justice...". In this regard, the General Assembly requested the Joint Inspection Unit (JIU) to continue to study the possibility of harmonizing the statutes of the United Nations Administrative Tribunal (UNAT) and the International Labour Organization Administrative Tribunal (ILOAT), bearing in mind the information contained in paragraphs 39 to 42 of the report of the Secretary-General A/56/800, for consideration by the General Assembly at its fifty-ninth session.

B. After reviewing previous reports, studies and recommendations dealing with the harmonization and possible unification of the Administrative Tribunals,[1] the Inspectors conclude that there are only three major differences between the Tribunals, they relate to:

1. Selection and appointment of members of the Tribunals;
2. Authority of the Tribunals to order specific performance by the executive heads; and
3. Limitations on the amount of compensation that may be awarded by the Tribunals.

C. Eliminating these discrepancies should close the gap between the two Tribunals, removing the perception of inequality within the United Nations internal justice system and strengthening the United Nations common system with regard to administration of justice. The Inspectors are of the view that all other differences in the statutes and practices of the two Tribunals are minor and do not materially affect the administration of justice thus bringing any further harmonization of the statutes to a close.

Recommendation 1: The General Assembly should continue to keep under review the issue of selection and appointment of members of UNAT with a view to bringing these practices into conformity with the statute and practices of ILOAT.

Recommendations 2: The General Assembly should amend article 10 of the UNAT statute to bring it into conformity with the ILOAT statute and settle the issues of specific performance and compensation limitations.

Recommendation 3: The General Assembly should continue to treat, as a matter of priority, the improvement of other elements of the process of internal justice that precede the Tribunal stage of a dispute. Those processes are slow and cumbersome; expediting and improving those measures may lead to fewer cases being brought to the Tribunal and result in less costly decisions and procedures.

Recommendation 4: The Secretary-General, in his capacity as chairman of the United Nations System Chief Executives Board for Coordination (CEB), should invite the Board to develop a mechanism to enhance cooperation and facilitate professional exchange and regular dialogue between UNAT, ILOAT and other international administrative tribunals, particularly with respect to the uniform and consistent application of case law which is the primary determinant of fair and equal systems of justice.

I. BRIEF OVERVIEW OF THE MAIN DIFFERENCES BETWEEN THE TRIBUNALS

1. UNAT is the independent organ competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the United Nations Secretariat or of their terms of appointment as well as applications alleging non-observance of the regulations and rules of the United Nations Joint Staff Pension Fund, arising out of decisions by the Fund. The Tribunal was established by the General Assembly in its resolution 351A (IV) of 24 November 1949 by the adoption of its Statute.[2] The UNAT Statute was amended by resolution 782B (VIII) on 9 December 1953, by resolution 957 (X) on 8 November 1955, by resolution 50/54 on 11 December 1995, by resolution 52/166 on 15 December 1997, by resolution 55/159 on 31 January 2001 and by resolution 58/87 on 9 December 2003.

2. The competence of the Tribunal extends to the secretariats of associated funds and programmes that are financed from voluntary contributions, such as the United Nations Children's Fund, United Nations Development Programme, United Nations Population Fund, United Nations High Commissioner for Refugees and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, as well as the International Maritime Organization, International Civil Aviation Organization, International Seabed Authority and the registries of the International Court of Justice and the International Tribunal for the Law of the Sea.[3]

3. ILOAT is the successor of the League of Nations Tribunal. The International Labour Conference adopted the Statute of ILOAT in 1946 and undertook amendments in 1949, 1986, 1992 and 1998. It hears complaints from serving and former officials of the International Labour Organization (ILO) or one of the other international organizations that recognise its jurisdiction. The Tribunal is competent to hear complaints against more than forty international organizations, including the majority of the United Nations specialized agencies (see Annex I).

4. While there are many differences between the statutes and practices of the two Tribunals, the Unit has been able to identify only three discrepancies that may be perceived as having the potential to materially affect the consistency and uniformity of the case law within the United Nations system. They relate to:

i) Selection and appointment of UNAT members and ILOAT judges

Article 3 (1) of the Statute of UNAT states: "*The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction...*".

Article III (1) of the Statute of ILOAT states: "*The Tribunal shall consist of seven judges who shall all be of different nationalities.*"

The International Labour Conference appoints ILOAT judges, after nomination by the Director-General of ILO and following consultations with the Officers of the Governing Body (representing all the tripartite constituents of the

Organization, namely Governments, Employers and Workers); these nominations are subsequently endorsed by the ILO Governing Body, for submission to the ILO Conference, where they are approved. By contrast, Governments nominate UNAT members, and their election in the Fifth Committee is confirmed by the General Assembly.

The procedure of selection and appointment of UNAT members might potentially be perceived as diminishing the independence, quality and experience of that Tribunal in comparison to ILOAT and other international administrative tribunals. As the judges at ILOAT are professional judges and therefore bound by strict professional ethics, usually from the highest national courts, they are generally perceived as being more independent and experienced and this positively influences staff confidence in that Tribunal.

ii) The authority of the Tribunals to order specific performance by the executive heads

Article 10 (1) of the statute of UNAT states: *"If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked.* ***At the same time***[4] *the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgement, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his case...".*

In other words, UNAT must automatically fix, as part of its original judgement, an amount of compensation to be paid to the applicant, leaving it to the Secretary-General to decide, whether, "in the interest of the United Nations", he prefers to comply with the order for rescission or performance, or to pay the amount indicated by the Tribunal. In practice, until recently, the Secretary-General has almost always chosen to pay the compensation rather than to rescind the contested administrative decision.

With regard to ILOAT, it is the Tribunal itself that decides whether rescission or performance "is not possible or desirable", in which case it awards the applicant monetary compensation. It is worth mentioning however, that rarely and in respect of lower-level officials (those not directly appointed by the Executive Heads of the Organizations), has the ILOAT required specific performance without giving the respondent organization the choice of paying compensation.

The fact that it is the Secretary-General and not UNAT who decides whether, in the interest of the United Nations, to comply with the order for rescission or performance, or to pay the amount indicated by the Tribunal,[5] undermines staff confidence in the Tribunal and raises questions regarding the independence and fairness of the process. It also creates an impression that ILOAT enjoys greater authority than UNAT. UNAT itself has stated that this specific gap "represents a glaring example of injustice and discrimination between the two categories of staff members working under the United Nations system."[6]

iii) Compensation limitations

The statute of the ILO Administrative Tribunal does not provide a specific limit on the monetary compensation that may be awarded to a claimant. However, article 10 of the UNAT statute provides that in normal circumstances the amount of compensation should be limited to two years net base salary of the claimant. The Inspectors note that in the past five years this limit was rarely exceeded. Moreover, in practice the ILOAT awards very rarely exceed UNAT limits. For example, in the case of ILO itself, there have been no cases in the past five years that exceeded this limit (see Annex III). Nevertheless, the existence of these caps contributes to a perception of a more limited authority of UNAT vis-à-vis ILOAT, as observed earlier.

II. RECOMMENDATIONS

5. The Unit considers that the issue of harmonization of the statutes of UNAT and ILOAT has been on the agenda of the United Nations for too long and over the years has become unnecessarily complicated to the detriment of the administration of justice at the United Nations. The Inspectors strongly recommend that this matter be finalized and that decisive steps be taken to eliminate the three most important remaining discrepancies between the statutes of UNAT and ILOAT. In this context, it is recommended that the statute of UNAT be amended to conform to that of ILOAT, particularly as regards the selection and appointment of members of the Tribunal, specific performance and compensation limitations. Noting the potential of each of these issues to affect the uniformity of case law, the relevant amendments to the UNAT statute is considered a priority.

i) Selection and appointment of members

The Inspectors are of the view that the appointment, in consultation with all interested parties, of professional judges from national courts with relevant experience in labour law and administrative law would undoubtedly be ideal for UNAT. However, they are also aware that this process may take time and would therefore concur, as an interim measure, with the General Assembly's approach to strengthen UNAT through the recent amendment of its statute, which provides that "*Members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction...*".[7] The General Assembly should continue to pay attention to the level of qualifications of members of UNAT with the view to ensuring the appointment of professional judges and the high standards of the Tribunal.

ii) Authority of the Tribunals to order specific performance by the executive heads

The discrepancy between the statutes regarding specific performance should be addressed immediately. The JIU does not share the view that the appropriate modification of the UNAT statute would affect the prerogatives of the Secretary-General as Chief Administrative Officer of the Organization. In this regard the Unit notes that the executive heads of the organizations that

recognize the jurisdiction of ILOAT do not appear to have such a concern, despite the fact that the final decision in respect of rescission or performance rests with the Tribunal.

The Secretary-General recently expressed his willingness to reconsider his position on specific performance.[8] The JIU welcomes this readiness and recommends that consideration be given to adopting an approach similar to that of ILOAT regarding specific performance.

iii) Compensation limitations

The Inspectors recommend that the two-year net base salary limit on award for claimants should be eliminated and that the approach of ILOAT and other international administrative tribunals should be followed. This will not have significant financial implications provided the processing period for cases before UNAT is reduced from the current five years (including hearings of the Joint Appeals Board) to around one year, which is the norm in other international organizations. It is expected that the Office of Internal Oversight Services' management review of the appeals process, requested by the General Assembly in its resolution 57/307, will contribute to reducing the processing period and ensuring greater efficiency in this regard.[9] If the processing period is not likely to be reduced in the near future, the Unit recommends that the Secretary-General's proposal to increase the amount of compensation to three years net base salary be adopted as an interim measure.[10]

6. Until now, the case law of UNAT and ILOAT has been surprisingly uniform and consistent, largely because the bases for decision-making in international administrative law are generally universal. In spite of this, there have been some discrepancies in case law that could be avoided with better cooperation between the Tribunals.[11] It is recommended that a mechanism be developed to enhance cooperation between UNAT and ILOAT as well as with other international administrative tribunals such as the Tribunals of the World Bank, International Monetary Fund, Organization for Economic Cooperation and Development, Council of Europe, Organization of American States, etc. The Inspectors note, for example, that the European Space Agency is developing a database of case law of all international administrative tribunals, which could be a base for further cooperation between tribunals. The United Nations System Chief Executives Board for Coordination should consider this at one of its sessions.

III. GENERAL OBSERVATIONS ON THE FINANCIAL IMPLICATIONS OF HARMONIZATION

7. In the context of broader financial issues, the Inspectors explored the possible budgetary implications that would result from harmonization of the statutes of the UNAT and ILOAT or the elimination of the three main outstanding differences between these statutes. Based on this review it is apparent that there would most likely be no significant budgetary implications.

8. An amendment regarding specific performance should have a positive impact, since presumably it will lead to a reduction in the number of cases in which compensation is granted in lieu of rescission of the contested administrative decision. The removal of the cap on the amount of compensation that may be awarded to claimants can have some limited financial implications. However, it should be noted that in exploring the practice of other international administrative tribunals that do not impose limits on compensation the Inspectors found that the United Nations standard is rarely exceeded.

9. The Inspectors are convinced that the elimination of UNAT's two-year net base salary cap must be accompanied by a reduced, timelier processing period for cases. It is recalled that the average processing period for cases in the United Nations recourse procedure is five years while at ILO it is around one year.

IV. CONCLUDING COMMENTS

10. The JIU considers that a single internal justice system is a desirable future goal of the United Nations system. However, such a goal should not simply involve the unification of the two Tribunals. Indeed, such unification does not appear to be achievable in the short term for a number of reasons, including the strong opposition to it by staff of both the United Nations and the ILO. Neither would such unification achieve, as has been stressed in previous reports, any significant benefits or efficiency gains. Should the creation of a single tribunal for the whole United Nations system continue to be a consideration, it is likely that a separate entity would have to be established, incorporating the best practices of UNAT and ILOAT as well as other international administrative tribunals. Upon the request of the General Assembly, the JIU would be willing to continue to explore the modalities for the establishment of any such tribunal.

End Notes

[1] Report of the Secretary-General on Administration of Justice in the Secretariat (A/56/800), 13 February 2002; Report of the Secretary-General on the Feasibility of Establishing a Single Administrative Tribunal (A/42/328), 15 June 1987; Study on Administrative Tribunal: Procedures and Unification, initiated by the Administrative Committee on Coordination (ACC) and undertaken by the consultant, Gurdon Wattles (CCAQ/PER/R.107, Annex II); and Reports of the Joint Inspection Unit (A/41/640, A/55/57and A/57/441)

[2] UN Office of Legal Affairs, Secretariat of the United Nations Administrative Tribunal (http://untreaty.un.org/ola-internet/unat.htm)

[3] Comprehensive Report on the Activities of the United Nations Administrative Tribunal (A/58/680), 14 January 2004, para.10

[4] Bold type added for emphasis

[5] Report of the Secretary-General on the Feasibility of Establishing a Single Administrative Tribunal (A/42/328), 15 June 1987, para.50

[6] Letter dated 8 November 2002 from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee (A/C.5/57/25), 20 November 2002, Annex II, para.2

[7] General Assembly Resolution on Administration of Justice at the United Nations (A/RES/58/87), 9 December 2003

[8] Report of the Secretary-General on Administration of Justice in the Secretariat (A/56/800), 13 February 2002, para.42

[9] General Assembly Resolution on Administration of Justice in the Secretariat (A/RES/57/307), 15 April 2003, paras.8-11,

[10] Report of the Secretary-General on Administration of Justice in the Secretariat (A/56/800), 13 February 2002, para.43

[11] In 1978, the Director-General of ILO, on the basis of an advisory opinion given by the ILOAT judges, took an administrative decision with regard to the remuneration of General Service staff of that Organization which differed from recommendations of the International Civil Service Commission as approved by the General Assembly. This prompted the General Assembly to adopt resolution 33/119 in which it requested the Secretary-General to study the feasibility of establishing a single administrative tribunal for the entire common system.

ANNEX I

Organizations that recognize the jurisdiction of UNAT and ILOAT

UNAT	ILOAT
United Nations Secretariat	International Labour Organization (ILO), including the International Training Centre (ITCILO)
United Nations Development Programme (UNDP)	World Health Organization (WHO), including the Pan American Health Organization (PAHO)
United Nations Children's Fund (UNICEF)	United Nations Educational, Scientific and Cultural Organization (UNESCO)
United Nations Population Fund (UNFPA)	International Telecommunication Union (ITU)
United Nations High Commissioner for Refugees (UNHCR)	World Meteorological Organization (WMO)
United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)	Food and Agriculture Organization of the United Nations (FAO)
	World Food Programme (WFP)
International Maritime Organization (IMO)	European Organization for Nuclear Research (CERN)
International Civil Aviation Organization (ICAO)	World Trade Organization (WTO)
International Seabed Authority	International Atomic Energy Agency (IAEA)
Registry of the International Court of Justice (ICJ)	World Intellectual Property Organization (WIPO)
Registry of the International Tribunal for the Law of the Sea	European Organization for the Safety of Air Navigation (Eurocontrol)
	Universal Postal Union (UPU)
	European Southern Observatory (ESO)
	Intergovernmental Council of Copper Exporting Countries (CIPEC)
	European Free Trade Association (EFTA)
	Inter-Parliamentary Union (IPU)
	European Molecular Biology Laboratory (EMBL)
	World Tourism Organization (WTO)
	European Patent Office (EPO)
	African Training and Research Centre in Administration for Development (CAFRAD)
	Intergovernmental Organization for International Carriage by Rail (OTIF)
	International Centre for the Registration of Serials (CIEPS)
	International Office of Epizootics (OIE)
	United Nations Industrial Development Organization (UNIDO)
	International Criminal Police Organization (Interpol)
	International Fund for Agricultural Development (IFAD)
	International Union for the Protection of New Varieties of Plants (UPOV)
	Customs Co-operation Council (CCC)
	Court of Justice of the European Free Trade Association (EFTA Court)
	Surveillance Authority of the European Free Trade Association (ESA)
	International Service for National Agricultural Research (ISNAR)
	International Organization for Migration (IOM)
	International Centre for Genetic Engineering and Biotechnology (ICGEB)
	Organization for the Prohibition of Chemical Weapons (OPCW)
	International Hydrographic Organization (IHO)
	Energy Charter Conference (ECC)
	International Federation of Red Cross and Red Crescent Societies
	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO PrepCom)
	European and Mediterranean Plant Protection Organization (EPPO)
	International Plant Genetic Resources Institute (IPGRI)
	International Institute for Democracy and Electoral Assistance (International IDEA)
	International Criminal Court (ICC)
	International Olive Oil Council (IOOC)

ANNEX II

COMPARISON OF THE STATUTES OF UNAT AND ILOAT[1]

UNAT Statute		ILOAT Statute
Art.1 A Tribunal is established by the present Statute to be known as the United Nations Administrative Tribunal.	**Establishment of the Tribunal**	**Art. I** There is established by the present Statute a Tribunal to be known as the International Labour Organization Administrative Tribunal.
Art.2 1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words "contracts" and "terms of appointment" include all pertinent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations. 2. The Tribunal shall be open: (a) To any staff member of the Secretariat of the United Nations even after his or her employment has ceased, and to any person who has succeeded to the staff member's rights on his or her death; (b) To any other person who can show that he or she is entitled to rights under any contract or terms of appointment, including the provisions of staff regulations and rules upon which the staff member could have relied. 3. In the event of a dispute as to whether the Tribunal has competence, the matter shall be settled by the decision of the Tribunal. 4. The Tribunal shall not be competent, however, to deal with any applications where the cause of complaint arose prior to 1 January 1950.	**Competence**	**Art. II** 1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case. 2. The Tribunal shall be competent to settle any dispute concerning the compensation provided for in cases of invalidity, injury or disease incurred by an official in the course of his employment and to fix finally the amount of compensation, if any, which is to be paid. 4. The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution. 6. The Tribunal shall be open: (a) to the official, even if his employment has ceased, and to any person on whom the official's rights have devolved on his death; (b) to any other person who can show that he is entitled to some right under the terms of appointment of a deceased official or under provisions of the Staff Regulations on which the official could rely. 7. Any dispute as to the competence of the Tribunal shall be decided by it, subject to the provisions of Art. XII (…the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice.)
Art.3 1. The Tribunal shall be composed of seven members, no two of whom may be nationals of the same State. Members shall possess judicial or other relevant legal experience in the field of administrative law or its equivalent within the member's national jurisdiction. Only three members shall sit in any particular case. 2. The members shall be appointed by the General Assembly for four years and may be reappointed once. A member appointed to replace a member whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed once. 3. The Tribunal shall elect its President and its two Vice-Presidents from among its members. 5. No member of the Tribunal can be dismissed by the General Assembly unless the other members are of the unanimous opinion that he or she is unsuited for further service. 6. In case of a resignation of a member of the Tribunal, the resignation shall be addressed to the President of the Tribunal for transmission to the Secretary-General. This last notification makes the place vacant.	**Composition of the Tribunal**	**Art. III** 1.The Tribunal shall consist of seven judges who shall all be of different nationalities. 2. The judges shall be appointed for a period of three years by the Conference of the International Labour Organization. **Rules of the ILOAT, adopted 24 November 1993** **Art. 1** 1. The Tribunal shall elect a President and a Vice-President. 2. Election shall be by vote of the majority of its members.

[1] **The underlined text highlights the main differences between the two statutes.**

Art.4 The Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to there being cases on its list which, in the opinion of the President, justify holding the session. Extraordinary sessions may be convoked by the President when required by the cases on the list.	**Sessions**	**Art. IV** The Tribunal shall hold ordinary sessions at dates to be fixed by the Rules of Court, subject to there being cases on its list and to such cases being, in the opinion of the President, of a character to justify holding the session. An extraordinary session may be convened at the request of the Chairman of the Governing Body of the International Labour Office.
Art.5 1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Tribunal. 2. The expenses of the Tribunal shall be borne by the United Nations. **Art.3** 4. The Secretary-General shall provide the Tribunal with an Executive Secretary and such other staff as may be considered necessary.	**Administrative Arrangements**	**Art. IX** 1. The administrative arrangements necessary for the operation of the Tribunal shall be made by the International Labour Office in consultation with the Tribunal. 2. Expenses occasioned by sessions of the Tribunal shall be borne by the International Labour Office. **Rules of the ILOAT, adopted 24 November 1993** Art. 2 The Tribunal shall have a Registrar and an Assistant Registrar appointed by the Director-General of the International Labour Office.
Art.6 1. Subject to the provisions of the present Statute, the Tribunal shall establish its rules. 2. The rules shall include provisions concerning: (a) Election of the President and Vice-Presidents; (b) Composition of the Tribunal for its sessions; (c) Presentation of applications and the procedure to be followed in respect to them; (d) Intervention by persons to whom the Tribunal is open under paragraph 2 of article 2, whose rights may be affected by the judgement; (e) Hearing, for purposes of information, of persons to whom the Tribunal is open under paragraph 2 of article 2, even though they are not parties to the case; and generally (f) Other matters relating to the functioning of the Tribunal.	**Rules**	**Art. X** 1. Subject to the provisions of the present Statute, the Tribunal shall draw up Rules of Court covering: (a) the election of the President and Vice-President; (b) the convening and conduct of its sessions; (c) the rules to be followed in presenting complaints and in the subsequent procedure including intervention in the proceedings before the Tribunal by persons whose rights as officials may be affected by the judgment; (d) the procedure to be followed with regard to complaints and disputes submitted to the Tribunal by virtue of paragraphs 3 and 4 of article II; (e) and, generally, all matters relating to the operation of the Tribunal which are not settled by the present Statute. 2. The Tribunal may amend the Rules of Court.

Art.7 1. An application shall not be receivable unless the person concerned has previously submitted the dispute to the joint appeals body provided for in the Staff Regulations and the latter has communicated its opinion to the Secretary-General, except where the Secretary-General and the applicant have agreed to submit the application directly to the Administrative Tribunal. 2. In the event of the joint body's recommendations being favourable to the application submitted to it, and insofar as this is the case, an application to the Tribunal shall be receivable if the Secretary-General has: (a) Rejected the recommendations; (b) Failed to take any action within thirty days following the communication of the opinion; (c) Failed to carry out the recommendations within thirty days following the communication of the opinion. 3. In the event that the recommendations made by the joint body and accepted by the Secretary-General are unfavourable to the applicant, and insofar as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous. 4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date. Nevertheless, the said time limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his or her own affairs files the application in the name of the said staff member. 5. In any particular case, the Tribunal may decide to suspend the provisions regarding time limits. 6. The filing of an application shall not have the effect of suspending the execution of the decision contested. 7. The application may be filed in any of the six official languages of the United Nations.	**Complaints**	**Art. VII** 1. A complaint shall not be receivable unless the decision impugned is a final decision and the person concerned has exhausted such other means of resisting it as are open to him under the applicable Staff Regulations. 2. To be receivable, a complaint must also have been filed within ninety days after the complainant was notified of the decision impugned or, in the case of a decision affecting a class of officials, after the decision was published. 3. Where the Administration fails to take a decision upon any claim of an official within sixty days from the notification of the claim to it, the person concerned may have recourse to the Tribunal and his complaint shall be receivable in the same manner as a complaint against a final decision. The period of ninety days provided for by the last preceding paragraph shall run from the expiration of the sixty days allowed for the taking of the decision by the Administration. 4. The filing of a complaint shall not involve suspension of the execution of the decision impugned.
Art.8 Where the three members of the Tribunal sitting in any particular case consider that the case raises a significant question of law, they may, at any time before they render judgment, refer the case for consideration by the whole Tribunal. The quorum for a hearing by the whole Tribunal shall be five members.	**Composition in Exceptional Cases**	**Art. III** 3. A meeting of the Tribunal shall be composed of three judges or, in exceptional circumstances, five, to be designated by the President, or all seven.
Art.9 The oral proceedings of the Tribunal shall be held in public unless the Tribunal decides that exceptional circumstances require that they be held in private.	**Oral Proceedings**	**Art. V** The Tribunal shall decide in each case whether the oral proceedings before it or any part of them shall be public or in camera.

Art.10 1. If the Tribunal finds that the application is well founded, it shall order the rescinding of the decision contested or the specific performance of the obligation invoked. At the same time, the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained should the Secretary-General, within thirty days of the notification of the judgment, decide, in the interest of the United Nations, that the applicant shall be compensated without further action being taken in his or her case, *provided that such compensation shall not exceed the equivalent of two years' net base salary of the applicant*. The Tribunal may, however, in exceptional cases, when it considers it justified, order the payment of a higher indemnity. A statement of the reasons for the Tribunal's decision shall accompany each such order. 2. Should the Tribunal find that the procedure prescribed in the Staff Regulations or Staff Rules has not been observed, it may, at the request of the Secretary-General and prior to the determination of the merits of the case, order the case remanded for institution or correction of the required procedure. Where a case is remanded, the Tribunal may order the payment of compensation, which is not to exceed the equivalent of three months' net base salary, to the applicant for such loss as may have been caused by the procedural delay. 3. In all applicable cases, compensation shall be fixed by the Tribunal and paid by the United Nations or, as appropriate, by the specialized agency participating under article 14.	**Substantive Powers of the Tribunal**	**Art. VIII** In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him. **Art. IX** 3. Any compensation awarded by the Tribunal shall be chargeable to the budget of the International Labour Organization.
Art.11 1. The Tribunal shall take all decisions by a majority vote. 2. Subject to the provisions of article 12, the judgements of the Tribunal shall be final and without appeal. 3. The judgements shall state the reasons on which they are based. 4. The judgements shall be drawn up, in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the Secretariat of the United Nations. 5. A copy of the judgement shall be communicated to each of the parties in the case. Copies shall also be made available on request to interested persons.	**Judgements**	**Art. VI** 1. The Tribunal shall take decisions by a majority vote; judgments shall be final and without appeal. 2. The reasons for a judgment shall be stated. The judgment shall be communicated in writing to the Director-General of the International Labour Office and to the complainant. 3. Judgments shall be drawn up in a single copy, which shall be filed in the archives of the International Labour Office, where it shall be available for consultation by any person concerned.
Art.12 The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties.	**Revision of Judgements**	**Art. XII** 1. In any case in which the Governing Body of the International Labour Office or the Administrative Board of the Pensions Fund challenges a decision of the Tribunal confirming its jurisdiction, or considers that a decision of the Tribunal is vitiated by a fundamental fault in the procedure followed, the question of the validity of the decision given by the Tribunal shall be submitted by the Governing Body, for an advisory opinion, to the International Court of Justice. 2. The opinion given by the Court shall be binding.

Art.13 The present Statute may be amended by decision of the General Assembly.	**Amendments**	**Art. XI** The present Statute shall remain in force during the pleasure of the General Conference of the International Labour Organization. It may be amended by the Conference or such other organ of the Organization as the Conference may determine.
Art.14 1. The competence of the Tribunal shall be extended to the staff of the Registry of the International Court of Justice upon the exchange of letters between the President of the Court and the Secretary-General of the United Nations establishing the relevant conditions. 2. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted to the Tribunal by: (a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death; (b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization. 3. The competence of the Tribunal may be extended to any specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter upon the terms established by a special agreement to be made with each such agency by the Secretary-General of the United Nations. Each such special agreement shall provide that the agency concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that agency and shall include, inter alia, provisions concerning the agency's participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal. 4. The competence of the Tribunal may also be extended, with the approval of the General Assembly, to any other international organization or entity established by a treaty and participating in the common system of conditions of service, upon the terms set out in a special agreement between the organization or entity concerned and the Secretary-General of the United Nations. Each such special agreement shall provide that the organization or entity concerned shall be bound by the judgements of the Tribunal and be responsible for the payment of any compensation awarded by the Tribunal in respect of a staff member of that organization or entity and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Tribunal and concerning its sharing the expenses of the Tribunal.	**Jurisdiction of the Tribunal**	**Art. II** 5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules of Procedure, and which is approved by the Governing Body. **Art. II** 3. The Tribunal shall be competent to hear any complaint of non-observance of the Staff Pensions Regulations or of rules made in virtue thereof in regard to an official or the wife, husband or children of an official, or in regard to any class of officials to which the said Regulations or the said rules apply. 4. The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organization is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution. **Annex to the Statute of the Administrative Tribunal of the International Labour Organization** To be entitled to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization, an international organization must either be intergovernmental in character, or fulfil the following conditions: a) it shall be clearly international in character, having regard to its membership, structure and scope of activity; b) it shall not be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and c) it shall be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.

ANNEX III

PAYMENTS MADE IN IMPLEMENTATION OF ADMINISTRATIVE TRIBUNAL JUDGEMENTS 1999 TO 2003

(figures in respect of the United Nations and the International Labour Organization only)

United Nations			ILO		
Judgement no.	**Decision**	**Amount paid**	**Judgement no.**	**Decision**	**Amount paid**
1999			**1999**		
914	18 months nbs	$ 118,662.12	1875	$ 2,000 (costs) - $ 20,000 (damages)	$ 22,000.00
915	2 months nbs	$ 4,584.62	1881	4½ months salary and benefits less any interim occupational earnings	$ 24,313.22
925	1 year nbs	$ 71,086.01			
923	2 months nbs at time of separation	$ 11,264.66			
936	3 years nbs	$ 245,042.52			
941	6 months nbs	$ 25,346.04			
937	5 months nbs	$ 14,475.05			
2000			**2000**		
981	18 months nbs	$ 7,730.10	1974	16,000,000 CFA francs (minus amounts already paid) 1,000,000 CFA francs in costs	CFA 8,426,247
974	3 months nbs	$ 26,336.85			
986	$ 800 to each of 31 applicants	$ 24,800.00			
988	Payment of $ 2,500 in addition to JAB payment of $ 5,500	$ 2,500.00			
948	3 month nbs	$ 8,336.25			
980	6 months nbs	$ 35, 874.90			
2001			**2001**		
1008	27 months nbs at date of separation	$ 154,519.38	2067	FF 20,000 (costs) € 3,000 (moral damages)	€ 6,000
997	Payment of $ 10,000.00	$ 10,000.00			
1030	1 month nbs	$ 7,698.08	2083	CHF 3,000 (costs)	CHF 3,000
1097	9 months nbs at date of seperation	$ 42,058.53			
1009	$ 30,000 in compensation	$ 30,000.00			
1031	1 year nbs	$ 87,081.00			
1040	$ 22,500 in compensation	$ 22,500.00			
1035	1 month nbs	$ 5,771.25			
1028	Payment of applicable DSA	$ 51,993.00			
1039		na			
1023	2 years nbs plus $ 30,000	$ 153,970.00			
1022	2 years nbs	$ 184,388.00			
1029	1 year nbs plus $50,000	$ 94,813.67			
United Nations			ILO		

Judgement no.	Decision	Amount paid	Judgement no.	Decision	Amount paid
2002			2007		
1062	4 months nbs	$ 13,229.02			
1049	Payment of $12,000	$ 12,000.00			
1069	6 months nbs	$ 41,081.00			
1060	Payment of $ 50,000	$ 50,000.00			
1043	6 months nbs	$ 23,672.00			
1048	3 months nbs	$ 11,960.76			
1067	3 months nbs	$ 19,729.75			
1070	Payment of $ 5,125 plus interest	$ 5,535.00			
1058	1 year nbs	$ 59,438.00			
1074	1 month nbs	$ 7,314.00			
1075	Retroactive dependency benefits	$ 58,553.19			
1057	2 months nbs	$ 6,819.56			
1047	Payment of $ 1,000	$ 1,000.00			
1098	Retroactive dependency benefits plus 6 months nbs	$ 29,694.80			
1086	Payment of $ 1,000	$ 1,000.00			
1085	1 month nbs	$ 5,269.00			
1090	Difference in grade	$ 2,819.35			
1080	Retroactive SPA plus 4 months nbs	$ 51,776.13			
1099	Payment of grade difference	$ 7,017.33			
1081	15 months nbs	$ 86,131.35			
1052	2 years nbs	$ 98,233.00			
1072	2 years nbs plus 3 months nbs	$ 251,216.98			
1087	1 month nbs	$ 6,688.00			
2003			2008		
1104	Payment of $ 5,000	$ 5,000.00			
1134	Payment of $1,001 compensation	$ 1,001.00			
1115	6 months nbs & retroactive payments	$ 63,479.84			
1118	3 months nbs plus 3 months nbs for undue delay	$ 28,515.00			
1112	Difference in grade	$ 2,004.53			
1122	6 months nbs	$ 38,633.00			
1129	Retroactive long-service step	$ 8,753.58			
1108	Payment of $ 2,000 compensation	$ 2,000.00			
1136	Difference in grade plus 1 year nbs	$ 93,242.20			
1136	Difference in grade + 6 months nbs	$ 33,451.09			

Key: nbs = net base salary
na = not available